

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

EXXON MOBIL CORPORATION,
Plaintiff,
VS.
UNITED STATES OF AMERICA,
Defendant.
.....

Civil Action
No. H-10-CV-2386
No. H-11-CV-1814
Houston, Texas
March 18, 2013
2:35 p.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE LEE H. ROSENTHAL
VIDEO STATUS CONFERENCE

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PROCEEDINGS RECORDED BY STENOGRAPHIC MEANS,
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1 PROCEEDINGS

2 March 18, 2013

3 THE COURT: Go ahead and be seated, please.

4 All right. So, I understand that we need to
5 extend the schedule by 90 days?

02:35:28

6 MR. COPELAND: Yes.

7 THE COURT: Anybody have a calendar with them because
8 I did not bring mine?

9 MR. COPELAND: We actually have a proposed order, your
10 Honor.

02:35:38

11 THE COURT: All right.

12 MR. COPELAND: And I will --

13 THE COURT: And you backed everything else out, too?

14 MR. COPELAND: Yes. The key changes are the cutoff of
15 discovery moves from March 8th to June 14th.

02:35:48

16 THE COURT: All right.

17 MR. COPELAND: The dispositive motions move from March
18 29th to August 15th.

19 THE COURT: So, how come we need so much additional
20 time from the cutoff -- completion of discovery to dispositive
21 motions?

02:36:00

22 MR. COPELAND: I have to confess that the people that
23 are on the other end of the camera were involved in negotiating
24 the schedule. And so, they may need to speak to that.

02:36:18

25 THE COURT: All right.

1 MR. ROWE: Good afternoon, your Honor. Mike Rowe from
2 the Justice Department and across from me is Mr. Steinway for
3 Exxon. The reason for the additional time is that the parties
4 at the -- we have agreed to a deposition schedule. We have a
5 number of depositions yet to take.

02:36:34

6 THE COURT: I'm not quarreling with the completion of
7 discovery. I was just wondering why you need --

8 MR. ROWE: Right.

9 THE COURT: -- two months after discovery is done to
10 prepare your dispositive motions.

02:36:44

11 MR. ROWE: And the answer is because we're going to
12 take the first month and see if we can settle the case.

13 THE COURT: Okay. That's a good answer.

14 MR. COPELAND: And the other major change is that the
15 docket call date moves from August 19th of this year to January
16 8th of 2014.

02:36:56

17 THE COURT: Okay.

18 MR. COPELAND: And I apologize for us being here today
19 with an agreed order. We didn't think we were going to have an
20 agreed order; and we, I think, finally resolved --

02:37:10

21 THE COURT: Good.

22 MR. COPELAND: -- the last of the issues this morning.

23 THE COURT: All right. All right. This looks
24 workable. This looks workable. Okay. I don't have any problem
25 with signing this. Are there other things that we can

02:37:34

1 productively address since everybody is here?

2 MR. COPELAND: Well, I guess there's -- this is
3 probably -- it may sound like an odd answer to that, but I
4 suppose one question is there is a lot of information here. And
02:37:54 5 I have in my mind a question of whether we could do anything to
6 help you to begin to get ready for this case.

7 THE COURT: A lot of information where "here"?

8 MR. COPELAND: I'm sorry. In the expert reports.

9 THE COURT: Okay.

02:38:08 10 MR. COPELAND: And you had mentioned at one point in
11 time that you would actually, perhaps, read the expert reports.

12 THE COURT: Oh, yeah.

13 MR. COPELAND: I don't know if I heard that correctly.

14 THE COURT: Oh, yeah. So, here's one question that
02:38:20 15 you had raised, which is the question of a supplemental report
16 that the United States intended to have one of its experts
17 provide. Is that something that --

18 MR. ROWE: We do, your Honor. That's the question we
19 had -- I don't know that it's resolved, but we're going to work
02:38:44 20 a bit more on it and see how it comes out. We might have to
21 come back and see you about that, but we elected this morning
22 between us not to trouble you with it right now.

23 THE COURT: All right. That sounds fine.

24 MR. ROWE: There's --

02:39:00 25 THE COURT: Go ahead.

1 MR. ROWE: There's -- I'm sorry, your Honor. There's
2 one other thing I just wanted to mention to the Court. We're
3 not quite ready to do it yet; and that is, the United States
4 will likely move in the relatively immediate future to amend its
5 pleadings to add an affirmative defense and counterclaim based
6 on some indemnity language in some of the World War II contracts
7 that we've located.

02:39:14

8 I've talked to Mr. Steinway about that, and he's
9 asked to see those amendments before we file them. We're
10 expecting that to be uncontested. I had hoped to have it for
11 you before today, and we just didn't quite get to that. So,
12 that will probably be coming across your desk in the not too
13 distant future.

02:39:26

14 THE COURT: All right.

02:39:36

15 MR. ROWE: But again, we're hoping -- I'm sorry.
16 We're hoping no contest.

17 THE COURT: Well, since you're proposing to have that
18 disclosed sufficiently in advance of finishing the experts and
19 finishing discovery, I don't see a problem and I take it that,
20 since it's contract language, experts aren't going to be
21 involved in this anyway.

02:39:52

22 MR. ROWE: It's mostly a legal issue, yes, ma'am.

23 THE COURT: All right. Okay.

24 MR. ROWE: Your Honor, there's one other thing that
25 may be helpful to you in the sense that Mr. Copeland was just

02:40:06

1 speaking about just in terms of conceptualizing where the case
2 is going if we don't manage to settle it, and that is, that we
3 had had some discussions before about what the summary judgment
4 motions in the case would look like and how comprehensive they
5 would be.

02:40:24

6 And while I don't think anybody is -- has
7 anything -- we don't have a formal agreement or anything
8 chiseled in stone, I think the parties are generally inclined at
9 this point to file what I would call comprehensive summary
10 judgment motions on the liability issues but not so much on the
11 allocation issues.

02:40:38

12 So, some of that complexity that Mr. Copeland is
13 talking about, which I agree, would be productive as we go for
14 us to talk about trying to simplify as much as we can for the
15 Court will likely come up following your resolution of the
16 summary judgment motions and depending on how that comes out.
17 So, it seems to me --

02:40:52

18 THE COURT: So, basically --

19 MR. COPELAND: Sorry, go ahead.

02:41:04

20 THE COURT: So, basically, you have in mind sort of
21 staged summary judgment motions, the first one dealing with
22 liability; and if I don't grant summary judgment on all
23 liability grounds, then you would move to summary judgment
24 motions on allocation. Is that where you're heading?

02:41:22

25 MR. ROWE: We have not discussed -- in concept, yes,

1 although I don't think we had discussed a second round of
2 summary judgment motions so much as we had wondered given that
3 nobody has managed to find a fact witness alive that matters at
4 this stage of the case, the difference between summary judgment
02:41:40 5 and trial, in quotes, is, basically, you're getting to listen to
6 the experts.

7 So, it's something that we will continue to talk
8 about and that we may talk to you about. I don't -- I would
9 have to say between the parties we really haven't settled that
02:41:54 10 one way or the other. I think we're anticipating summary
11 judgment motion and then some form of proceeding in which we
12 would put experts in front of your Honor and let you hear them
13 and see what you think is what we're thinking about right now.

14 THE COURT: Experts on allocation?

02:42:08 15 MR. ROWE: Experts on a number of things: history,
16 allocation, plant and petroleum engineering issues, and things
17 like that.

18 THE COURT: All right, good. That works. I think
19 that's workable. Okay. So, we have a proposed order which
02:42:24 20 looks fine, and you've given me a heads-up on some of the things
21 that are going to be coming up.

22 Is there anything else that makes sense to talk
23 about today?

24 MR. ROWE: I have one small thing, your Honor. I
02:42:38 25 would be remiss if I let us get out of here today without

1 mentioning that we are sort of 90 percent here on the sequester.
2 That we have agreed to this schedule on the assumption that that
3 will not be more disruptive than we hope, I suppose.

4 There is good reason to believe at this point,
02:42:56 5 although we're not absolutely certain, that we will get through
6 the end of discovery without having any significant disruption.
7 There is reason to hope that we may get through the rest of this
8 schedule without a disruption, but it's something that is still
9 up in the air here.

02:43:10 10 And so, I thought I just would mention it in
11 passing. I hope that we will not have to talk to you about it
12 again, but we really don't know at this point.

13 THE COURT: I think that's true probably in lots of
14 different ways. So, we'll be flexible --

02:43:28 15 MR. ROWE: We're hopeful.

16 THE COURT: -- as needed. All right.

17 MR. COPELAND: So, I'm still curious about the expert
18 reports and what the context is of your -- and you want to read
19 those in the context of the summary judgment motions?

02:43:42 20 THE COURT: Yeah, I assume that's when it will make
21 sense for me to read them.

22 MR. COPELAND: I think so, too, but I wanted to just
23 be sure.

24 THE COURT: No. It's just reading them without any
02:43:50 25 specific construct for them I don't think is going to be

1 helpful.

2 MR. COPELAND: Right, okay.

3 THE COURT: All right.

4 MR. COPELAND: And it will keep you, you know -- well,
02:44:00 5 it will put you to sleep.

6 THE COURT: Okay. Well, I don't know about that.

7 Okay. Well, this has been shorter than I thought
8 it would be and very helpful. I'll get this order entered and
9 we'll proceed along these lines.

02:44:12 10 Thank you very much.

11 MR. LONGORIA: Thanks, Judge.

12 MR. ROWE: Thank you.

13 MR. STEINWAY: Thank you, your Honor.

14 (Proceedings concluded at 2:44 p.m.)

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16

17 C E R T I F I C A T E

18

19 I certify that the foregoing is a correct transcript
20 from the record of proceedings in the above-entitled matter, to
21 the best of my ability.

22

23 By: /s/Gayle L. Dye

10-28-2013

24 Gayle L. Dye, CSR, RDR, CRR

Date

25